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June 26, 2007

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VIA E-MAIL

Re: State of Oklahoma v. Tyson Foods, et.al

Dear Nicole:

We are writing in response to your letter of June 21, 2007. First, you raised the issue of there being several entries with no dates. That was done because the document was undated, and we were unable to accurately discern the date of the document. However, we believe the description provided is sufficient to enable you to evaluate our claim of privilege. We do not believe that we are required to indicate whether the document is from a current of former investigation or litigation.

The second issue you raise is that we have withdrawn some documents from our claim of privilege. That is correct, and those documents will be produced to you. The documents are still at the agencies and we must go back and gather them up. We will get them to you as quickly as possible. Also, please note that some duplicate entries have been deleted, but the privilege claim was not withdrawn.

The third issue you raise is the changing of entries in the description or date. These entries were revised to provide a better description of the document. However, the State will review these individual entries to ensure their accuracy.

The fourth issue you raise is the State's claim of privilege for previous investigations and litigation. The State stands upon its letter of April 11, 2007 which addressed this issue. Your claim that "[t]he 10th Circuit in *Frontier* held that in order for the work product protection provided in one litigation to apply to subsequent litigation, it must be 'closely related' to the active litigation" is simply false. The Tenth Circuit in *Frontier* stated, "[w]e conclude that the work product doctrine extends to subsequent litigation. This court need not, however, determine whether the subsequent litigation must be closely related because this indemnity action is unquestionably 'closely related' to the underlying suit between *Frontier* and the injured contractors." *Frontier Refining, Inc. v Gorman-Rupp*, 136 F.3d 695, 703 (10th Cir. 1998).

June 26, 2007

Page 2

We hope that this clarifies the privilege log issues. If you have any questions, feel free to contact us.

Sincerely,


D. Sharon Gentry
FOR THE FIRM

DSG/dpe

cc: Plaintiff's Counsel